

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERNEST ADOLF SCHAEF, SR.,

Petitioner,

V.

BELINDA STEWART,

Respondent.

Case No. C06-5544FDB

ORDER DISMISSING PETITION

The Magistrate Judge recommends that this habeas corpus petition be dismissed as second and successive. Petitioner objects on the basis that he asserts he has sought an order from the Ninth Circuit Court of Appeals allowing him to file a second or successive habeas corpus petition, and urges that this Court not “jump the gun” and adopt the Report and Recommendation until the Ninth Circuit rules.

Once Petitioner obtains permission to file a second or successive 2255 petition, he may file such a petition along with the certification from the Ninth Circuit. Until then, the Court must agree with the Magistrate Judge and dismiss this petition.

The Court, having reviewed the petition for habeas corpus, the Report and Recommendation of Judge J. Kelley Arnold, United States Magistrate Judge, Petitioner's objections, and the remaining record, does hereby find and Order:

- (1) The Court adopts the Report and Recommendation.
- (2) Petitioner's pending motions, if any, are DENIED.
- (3) Petitioner's federal habeas petition is DISMISSED.
- (4) The Clerk is directed to send copies of this Order to petitioner and to Judge Arnold.

DATED this 27th day of November 2006.

[Signature]

FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE